

Amended or Supplemented Petition

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

CLERK USDC EDWN
FILED

2022 NOV 14 P 2:52

Michael K. Brown, Petitioner,
Full Name (under which you were convicted)

426179

Prisoner Number

Prairie Du Chien Correctional Inst.

Place of Confinement

Docket No. 22-CV-934-JPS

(to be supplied by Clerk)

vs.

Peter Jaeger, Respondent.
Authorized Person Having Custody of Petitioner

PETITION FOR WRIT OF HABEAS CORPUS PURSUANT TO 28 U.S.C. § 2254
BY A PERSON IN STATE CUSTODY

Caution: THIS IS NOT THE FORM TO BE USED, IF YOU CLAIM THAT YOUR FEDERAL SENTENCE OR CONVICTION IS UNLAWFUL, OR IF YOU ARE A PRETRIAL DETAINEE CHALLENGING YOUR PRECONVICTION CUSTODY, A FEDERAL PRISONER CHALLENGING THE EXECUTION OF YOUR SENTENCE OR AN ACTION TAKEN BY THE BUREAU OF PRISONS, OR A PERSON IN CUSTODY CHALLENGING AN IMMIGRATION-RELATED ORDER.

I. SUBJECT OF THIS PETITION

A. Name and location of the state court that entered the judgment of conviction which you are challenging

Walworth County, Wisconsin

B. Criminal docket or case number 18CF347, 18CF371

C. Date of the judgment of conviction 1-17-2019

D. Date of sentencing 1-10-2019

E. Length of sentence 22 years

F. In this case, were you convicted on more than one count or of more than one crime?

Yes No

G. Identify all crimes of which you were convicted and sentenced in this case

Ct. 1 (939.05 PTAC) Robbery of a Financial Institution - 347
Ct. 2 (939.32 Attempt) Escape - Criminal Arrest - 371

H. What was your plea? (Check one)

Not guilty Guilty Insanity plea Nolo contendere (no contest)

If you entered a guilty plea to one count or charge and a not guilty plea to another count or charge, what did you plead guilty to and what did you plead not guilty to?

I. If you went to trial, what kind of trial did you have? (Check one)

Jury Judge only

SUBJECT OF THIS PETITION - continued

J. Did you testify at a pretrial hearing, trial, or a post-trial hearing?

Yes No

If yes, state the type(s) of hearing or proceeding

II. DIRECT STATE APPEAL OF CONVICTION

A. Did you appeal from the judgment of conviction?

Yes No

If yes, attach the decision(s) that resolved your appeal and answer the following questions:

1. Date of filing appeal Immediately upon conviction approx. 1-11-2019
 2. Grounds raised Incorrect Jury Instruction attached to Plea Questionnaire Supplied by Defense Counsel misdescribes essential elements violates the Due Process Clause (14th Amendment). The Circuit Court also failed in going over the correct elements of the crime
 3. Result Denied by Circuit Court and Appellate Court.
 4. Date Not available to me
-

B. Did you seek further review by the highest state court?

Yes No

If yes, attach the decision(s) that resolved your petition for review and answer the following questions:

1. Date of filing of petition for review Not Available to me
 2. Grounds raised Incorrect Jury Instruction attached to Plea Questionnaire Supplied by Defense Counsel misdescribes essential elements violates the Due Process Clause (14th Amendment). The Circuit Court also failed in going over the correct elements of the crime
 3. Result Denied by Supreme Court of Wisconsin
 4. Date 9-14-2021
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DIRECT STATE APPEAL OF CONVICTION - continued

C. Did you file a petition for certiorari in the United States Supreme Court?

Yes No

If yes, attach the decision(s) that resolved your petition for certiorari and answer the following questions:

1. Date of filing petition for certiorari _____

2. Grounds raised _____

3. Result _____

4. Date _____

III. STATE POST-CONVICTION RELIEF OTHER THAN DIRECT APPEAL

A. Other than the appeals listed above in Section II, have you previously filed any other state petitions, applications, or motions concerning this state judgment of conviction?

Yes No

If yes, attach the decision(s) that resolved your application for state post-conviction relief and answer the following questions:

1. Name of court Walworth County Circuit Court

2. Docket or case number 18CF347, 18CF371

3. Date of filing Not available to me approx. October, 2021

4. Type of petition, application, or motion filed Sentence Modification

5. Grounds raised New factor not known at the time of
Sentencing and Sentence tracking and relative
Sentences with aggravating circumstances sentenced to far less

6. Did you receive a hearing where evidence was given on your petition, application, or motion?

Yes No

7. Result Denied

STATE POST-CONVICTION RELIEF OTHER THAN DIRECT APPEAL- continued

8. Date _____

9. Did you appeal to the highest state court having jurisdiction over the action taken on your first state petition, application, or motion?

Yes No

B. If you filed a second petition, application, or motion, attach the decision and answer the following questions:

1. Name of court Wisconsin Judicial Commission

2. Docket or case number 18CF347, 18CF371 Walworth County #'

3. Date of filing Not available approx. 8-1-2022

4. Type of petition, application, or motion filed Judicial misconduct

5. Grounds raised Was prejudicially sentenced because Judge and D.A.
were aware of Federal Lawsuit against County filed
while being pre-trial detainee. Eastern District Case 18-CV-165

6. Did you receive a hearing where evidence was given on your petition, application, or motion?

Yes No

7. Result Have not heard from Commission after mailing info.

8. Date Not applicable

9. Did you appeal to the highest state court having jurisdiction over the action taken on your second state petition, application, or motion?

Yes No

Not applicable

C. If you filed a third petition, application, or motion, attach the decision and answer the following questions:

1. Name of court Office of the Governor, Senator Lena Taylor

2. Docket or case number 18CF347, 18CF371

3. Date of filing Not available approx. 3-1-2022

STATE POST-CONVICTION RELIEF OTHER THAN DIRECT APPEAL- continued

4. Type of petition, application or motion filed Inquest into Judicial Misconduct
5. Grounds raised Evidence Supplied of Prejudicial treatment and Conduct in terms of retribution for Federal Lawsuit filed against prosecuting County while being pre-trial detainee Eastern District Case 18-cv-165
6. Did you receive a hearing where evidence was given on your petition, application, or motion?

Yes No

7. Result Evers office forwarded me to Judicial Commission

8. Date On 8-1-2022 No answer from Sen. Lena Taylor

9. Did you appeal to the highest state court having jurisdiction over the action taken on your third state petition, application, or motion?

Yes No

IV. GROUNDS FOR RELIEF

For this petition, state every ground supporting your claim that you are being held in violation of the Constitution, laws, or treaties of the United States. If you fail to set forth all the grounds in this petition, you may be barred from presenting additional grounds at a later date.

Attach additional pages if you have more than four grounds. State the facts supporting each ground.

CAUTION: To proceed in the federal court, you must ordinarily first exhaust (use up) your available state-court remedies on each ground on which you request action by the federal court.

Ground One Defense Counsel attached incorrect Jury Instruction to the plea questionnaire. My plea was not intelligently entered because I did not understand the essential elements of the offense.

Supporting FACTS (Briefly summarize the facts without citing cases or law.)

Under oath Court appointed defense counsel James Duquette stated that he did not have a copy of the correct Jury Instructions or that he could even locate a copy of the correct Jury Instructions for the

GROUND FOR RELIEF - continued

exact charge in his Law firms binders of Jury Instructions. He also states that given he could not locate the correct Jury Instructions that he could not recall going over the Jury Instructions or the essential elements of the crime with his client. He also states that his independent recollection about why the incorrect Jury Instructions were attached is not the clearest, but he can certainly agree and confirm the wrong ones were used.

If you did not exhaust your state remedies on Ground One, explain why. ^{Stated and confirmed under oath.}

Ground Two Court appointed defense counsel was ineffective for attaching wrong Jury Instructions to the plea questionnaire, as well as failing to discuss essential elements of crime with client

Supporting FACTS (Briefly summarize the facts without citing cases or law.)

On January 9, 2020 the circuit court conducted a evidentiary hearing. There was no dispute that the plea colloquy was defective, because of the use of Incorrect Jury Instructions attached by defense counsel. Also stated under oath by defense counsel that day was that he could not locate the correct Jury Instructions for the crime charged by Walworth County and thus did not go over them with his client Michael Brown. These essential elements of the crime were never

GROUND FOR RELIEF - continued

discussed. So how could a plea be entered freely, voluntarily and intelligently if defense counsel fails to discuss any of it? Therefore he is ineffective in his assistance.

If you did not exhaust your state remedies on Ground Two, explain why.

Ground Three The Circuit Court failed to meet its mandatory duties in terms of the defendant hearing the correct elements of the offense and acknowledging them during plea colloquy

Supporting FACTS (Briefly summarize the facts without citing cases or law.)

The court transcripts will show that Circuit Court Judge Phillip Koss failed to discuss or refer to the Jury Instruction during the plea colloquy. The Judge only asked if the defense counsel went over the plea questionnaire with Brown, but it did not ask counsel to summarize the elements on the record so that it could ascertain if Brown knowingly entered his plea. The transcripts will show that there is not a clear understanding of the elements, but there also is a reluctance to enter a plea that was rushed by the courts. The court also did not directly reference the allegations in the complaint. These multiple errors add up to a manifest of injustice.

If you did not exhaust your state remedies on Ground Three, explain why.

GROUNDS FOR RELIEF - continued

Ground Four _____

Supporting FACTS (Briefly summarize the facts without citing cases or law.)

V. PRIOR FEDERAL CHALLENGES

A. Have you previously filed any type of petition, application, or motion in a federal court regarding the state conviction that you are challenging in this petition?

Yes No

If yes, attach the decision(s) that resolved your prior federal court challenge and answer the following questions:

1. Name of court _____

PRIOR FEDERAL CHALLENGES - continued

2. Docket or case number _____

3. Date of filing _____

4. Type of petition, application, or motion filed _____

5. Grounds raised _____

6. Did you receive a hearing where evidence was given on your petition, application, or motion?

Yes No

7. Result _____

8. Date _____

9. Did you appeal the action taken on your first federal petition, application, or motion to a federal court of appeals?

Yes No

If yes, attach the decision(s) that resolved your appeal and answer the following questions:

a. Name of court _____

b. Docket or case number _____

c. Date of filing _____

d. Type of petition, application, or motion filed _____

e. Grounds raised _____

PRIOR FEDERAL CHALLENGES - continued

f. Result _____

g. Date _____

B. Did you file a petition for certiorari in the United States Supreme Court?

Yes No

If yes, attach the decision(s) that resolved your petition for certiorari and answer the following questions:

1. Date of filing petition for certiorari _____

2. Grounds raised _____

3. Result _____

4. Date _____

VI. REPRESENTATION

A. Give the name and address of each attorney who represented you in the following:

1. At preliminary hearing James Duquette 23 N. Wisconsin st.
P.O. Box 470 Elkhorn, WI 53121

2. At arraignment and plea hearing James Duquette

3. At trial James Duquette

4. At sentencing James Duquette

5. On direct appeal Jeffrey W. Jensen 111 E. Wisconsin Ave.
Suite 1925 Milwaukee, WI 53202-4825

REPRESENTATION - continued

6. In any state post-conviction proceeding

Jeffrey W. Jensen

7. On appeal from any ruling against you in a state post-conviction proceeding

Jeffrey W. Jensen.

VII. REQUEST FOR RELIEF

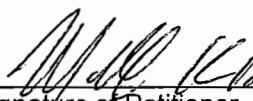
State exactly what you want the court to do for you.

Withdraw plea, vacate conviction and remand
back to the circuit court with directions
to require different Judge to preside over
case.

VIII. DECLARATION UNDER PENALTY OF PERJURY

I, the undersigned, hereby declare under penalty of perjury that the foregoing information is true and correct.

Signed this 9th day of November, 20 22.


Signature of Petitioner

(Signature of lawyer, if any)

If you are signing the petition and are not the petitioner, state your relationship to the petitioner and explain why the petitioner is not signing this petition.

IX. CERTIFICATE OF INMATE MAILING - Optional

If you deposit your petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254 in your prison/institutional/jail mailing system and attach first-class postage pre-paid, and complete and sign this statement, you will establish the filing date as the date of deposit in that mailing system.

I, the undersigned, hereby declare under penalty of perjury that I placed this petition for a writ of habeas corpus under 28 U.S.C. § 2254 in the prison/institutional/jail mailing system with prepaid, first-class postage on

11-9-22

(month, day, year)

Signed this 9th day of November, 2022.


Signature of Petitioner